IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1539 of 2000

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOPISHANKAR S VAID

Versus

STATE OF GUJARAT

Appearance:

MR AD SHAH for Petitioners

MR KP RAVAL, APP, for Respondent No. 1

MR BM MANGUKIYA for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 02/05/2000

ORAL JUDGEMENT

1. This is an application under section 482 of the Criminal Procedure Code at the instance of the original accused nos.4 to 7 for quashing the proceedings in Criminal Case No.4498/98, initiated under the complaint

of respondent no.2-original complainant who is the Food Inspector, Western Railway, Ahmedabad.

2. The said complainant filed a complaint in respect of offences punishable under section 7(ii) read with section 16 of the prevention of Food Adulteration Act, 1954, in respect of a food item produced by the Limited Company (accused no.8).

3. The contentions raised in the present application are two-fold and therefore it would be simpler to deal with applicant nos.1 and 2 (accused nos.4 and 5) on the one hand and applicant nos.3 and 4 (accused nos.6 and 7) on the other.

4. So far as the applicant nos.3 and 4 (accused nos.6 and 7) are concerned, the complainant refers to them in the complaint as "partners". It is well established that the accused no.8 which is the manufacturer of the food item in question is a public limited company, and that there cannot be any partners in a public limited company. Even if we assume that the complainant, while using the word "partners" for accused nos.6 and 7, in reality meant that they were directors, the said assertion is not justified according to the said applicants. This application clearly states on oath that they are neither partners of the company nor are they directors of the company. Furthermore, looking to the averments made in the complaint it is equally obvious that the complainant does not refer to accused nos.6 and 7 as directors whose consent or connivance has resulted in the commission of alleged offence. Thus, in the absence of any allegation in the complaint qua these two accused, there is no justification for proceeding against them in the said criminal case.

5. So far as the case of applicant nos.1 and 2 (accused nos.4 and 5) is concerned, the contention raised on behalf of these two persons is that they are and were directors, but are not the persons nominated under section 17 of the Prevention of Food Adulteration Act. Section 17 of the said Act reads as under:

> "17. Offences by companies - (1) Where an offence under this Act has been committed by a company-
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> (a)(i) the person, if any, who has been nominated under sub-section (2) to be in charge of, and responsible to, the company for the conduct of the business

of the company (hereinafter in this section referred to as the person responsible), or

(ii) where no person has been so nominated, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company; and

(b) the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(2) Any company may, by order in writing, authorise any of its directors or managers (such manager being employed mainly in a managerial or supervisory capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Local (Health) Authority, in such form and in such manner as may be prescribed, that it has nominated such director or manager as the person responsible, along with the written consent of such director or manager for being so nominated."

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It is, therefore, clear that the complainant may under the Prevention of Food Adulteration Act prosecute the company for offences alleged against it, and may also prosecute the person so nominated. However, apart from such nominated person, no prosecution would lie against any other director or officer of the company, unless specific allegations are made against such person concerned within the meaning of sub-section (4) of section 17.

6. On the facts of the case the present application nos.1 and 2 (accused nos.4 and 5) have established that

the nomination within the meaning of section 17 of the said Act is in favour of some other person viz. Shri Kalpesh Laljibhai Mistry, and that this is a statutory nomination in respect of which the necessary intimation in Form VIII (See Rule 12-B), has been filed by the company-accused no.8 with the Local Authority viz. the Ahmedabad Municipal Corporation. This nomination has been accepted by the Local Authority specifically under its endorsement made to the said nomination. It is, therefore, obvious that the said nominee stated in the said nomination could have been prosecuted by the complainant had he chosen to do so. However, he could not have prosecuted other directors (such as accused nos.4 and 5) unless specific allegations are made against such directors or officers of the company as contemplated by sub-section (4) of section 17. A plain reading of the complaint indicates that no allegation has been made against accused nos.4 and 5 that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of these persons. It is, therefore, obvious that the accused nos.4 and 5 could not have been prosecuted.

7. This view has been expressed by a decision of the Supreme Court in the case of R. Banerjee and others Vs. H.D. Dubey and others, reported at 1992 SCC (Cri.) 412.

8. It also requires to be noted that the relevant facts have been established by the applicants in the present application by an affidavit on oath and the respondents, including the respondent no.2-original complainant have not even attempted to controvert the same by filing any affidavit in reply.

9. In the premises aforesaid, for the reasons stated hereinabove, the issuance of process in the said criminal case by the learned Magistrate against the present applicants (accused nos.4 to 7) is clearly illegal and deserves to be quashed and set aside. Accordingly it is so held and directed. Consequently this application is allowed and rule is made absolute. Ad interim relief stands vacated. Direct service is permitted.

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